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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 554

AIR LINE STEWARDS AND STEWARDESSES ASSOCIATION, NO. 550, TWU, AFL-CIO, a labor organization, ROWLAND K. QUINN, JR., JANETTE HEISLER, HELEN CHASE, NANCY COLLINS, BARBARA ROADS, IRVING ROSEN, AND BEVERLY NELSON, individually and on behalf of all members of the AIR LINE STEWARDS AND STEWARDESSES ASSOCIATION, LOCAL 550, TWU, AFL-CIO,

Petitioners,

vs.

TRANSPORT WORKERS UNION OF AMERICA, a labor organization, MICHAEL J. QUILL, MATTHEW GUINAN, JAMES F. HORST, FREDRIC A. SIMPSON, CHARLES NELSON, AND MICHAEL F. CICCIA, individually and on behalf of all members of a certain class.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Respondents will confine themselves in this brief to a response to the Questions Presented, the Statement and the Reasons For Granting The Writ, as contained in the Petition. A considerable portion of the Petition is devoted to the merits of Petitioners' argument and to

an extensive and detailed development of supposed facts neither being germane to the consideration of whether certiorari is warranted in this case. To the extent possible, Respondents will omit a rebuttal to these matters not properly before the Court.

QUESTIONS PRESENTED.

Four questions are presented in the Petition as the basis of the request for the writ of certiorari. (Pet. 2-4.) A number of misstatements, misrepresentations and other improprieties are contained in the formulation of these questions. Since they constitute the very foundation of the Court's consideration of the Petition, we deem it essential to point out these deficiencies in some detail. This will be done in corresponding numerical order to the questions as presented in the Petition.

1. The first question should properly read as follows: Whether removal of a union member from the office of president of a local *for alleged misconduct in such office* constitutes discipline of the member within the meaning of Section 101 (a) (5) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C.A. Supp. 411 (a) (5).

This statement squarely presents the issue, since as shown in our Argument, *infra*, the reported cases in the lower federal courts distinguish between situations involving alleged misconduct as an officer and those involving alleged misconduct as a member.

2. Four misstatements or misrepresentations, as shown immediately below, reduce the second question to an empty and meaningless concoction: (a) The Court of Appeals found an "actual" termination of the trusteeship rather than the "formal" termination of the trusteeship, as suggested in Question 2. (Pet. 4a-5a.) (b) The Court of

Appeals did not find the entire case on appeal "moot" as suggested in Question 2. Only Count I of the Complaint, dealing with the trusteeship issue, was held to be moot. (Pet. 4a-5a; D.A. 2-10.) (c) The Court of Appeals did not hold that mootness of the trusteeship issue "terminated the jurisdiction of the federal courts to restore the president of the local to office, . . ." as suggested in Question 2. Petitioners are confusing the ruling of the Court below that Count I (trusteeship) was rendered moot with its ruling that there was no jurisdiction over Count II (removal of the president from office). (Pet. 5a-8a; D.A. 10-22.) (d) There is no finding of fact by the District Court that the unlawful removal by the international of the president of the local was an integral part of the unlawful imposition of the trusteeship which would impose continuing irreparable injury unless he was restored to office," as is asserted in Question 2. No such finding is contained in the findings of fact actually made by the Trial Court (D.A. 304-308); nor is any such finding contained in the lengthy findings of fact prepared by Petitioners. (D.A. 317-353.) We do find conclusions to this effect in the conclusions of law, which were also prepared by Petitioners. (D.A. 355-356.) Since these legal conclusions were reversed by the Court of Appeals below, it is a gross impropriety for the Petitioners to insert them as undisturbed findings of fact in Question 2 posed to this Court.

3. In the third question, Petitioners misrepresent that the duly-elected president "was unlawfully removed by the international as soon as the votes were counted." According to the findings of fact prepared for the Trial Court by Petitioners, the election was conducted by mail referendum in May and June of 1963. The results were certified on June 26, 1963 and the president was not removed until August 1, 1963. (D.A. 318, 345-346.) More-

over, the implication contained in the third question that the president was removed without being allowed to serve is in the face of the undisputed facts that he had served ten and one-half years prior to his removal for alleged misconduct as president during the two and one-half years prior to removal. (D.A. 318.)

4. The fourth question assumes that there is "a state cause of action for the arbitrary removal by the international of the president of the local . . ." The Court of Appeals noted in its decision, with respect to this contention, that "they cite no cases to support their position, . . ." (Pet. 7a.) The Court of Appeals, however, found it unnecessary to resolve this issue, holding that there was no jurisdiction over the removal created under the theory of pendent jurisdiction. Petitioners have therefore improperly assumed the existence of this condition precedent to Question 4 without submitting any authorities to the Courts below in substantiation of their position.

Moreover, it is wrongfully asserted in Question 4 that the District Court made a finding "that the evidence introduced on the issue of the illegality of the trusteeship also establishes the illegality under state law of the removal of the president." Once again, no such finding is contained in either the findings of fact of the District Court or of the Petitioners. This was but a conclusion of law prepared by the Petitioners. (D.A. 355-356.) As shown in our argument, *infra*, this conclusion is obviously erroneous.

STATEMENT.

Petitioners' statement is not "a concise statement of the case containing facts material to the consideration of the questions presented," as required under Rule 23 of the Rules of the Supreme Court. Respondents will make no attempt herein to rebut the self-serving, unsupported

and improper statements and conclusions contained in Petitioners' Statement. We merely advise the Court that a full and accurate statement of facts with supporting references to the record is contained in Defendants-Appellants' Brief before the Court of Appeals, said brief having been made a part of the record before this Court. (Pp. 4-27.) In this brief, Respondents will rely exclusively upon the facts set forth in the decision of the Court of Appeals below, which, we submit, are completely sufficient for a full consideration of all matters presented in the Petition. (Pet. 1a-4a, 6a.)

REASONS FOR DENYING THE WRIT.

Petitioners have failed to frame their argument around the four questions they present. Nevertheless, in this response, we shall attempt to follow these four questions.

I.

REVIEW IS NOT WARRANTED ON THE QUESTION OF WHETHER SECTION 101 (a)(5) OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT COVERS THE REMOVAL OF A UNION OFFICER FOR ALLEGED MISCONDUCT IN OFFICE.

A. There Is No Conflict Over This Question in the Lower Federal Courts.

It is undisputed that Quinn was removed from office on charges of misconduct in office. (Pet. 3a-4a.) The Court below, as well as the Third and Ninth Circuits and twelve federal district courts, have held that there is no jurisdiction under the Act over the removal of a union officer when the removal is based upon a charge of *misconduct as an officer*. *Sheridan* v. *United Brotherhood of Carpenters*, 306 F. 2d 152, 156 (3d Cir. 1962); *Grand Lodge* v. *King*, 56 L. R. R. M. 2639, 2640 (9th Cir. 6-23-64), pet. for cert.

pending, No. 456, this term; *Mirra* v. *Highway Freight Drivers*, ... F. Supp. ..... (D. C. N. J. 4-27-64), 56 L. R. R. M. 2127; *Csokuly* v. *Loblaw, Inc.*, ... F. Supp. ..... (D. C. W. D. Pa. 2-24-64), 56 L. R. R. M. 2527; *Bennett* v. *Hoisting and Portable Engineers*, 207 F. Supp. 361 (D. C. Ore. 1960); *Peters* v. *Steelworkers*, ... F. Supp. ..... (D. C. Ind. 5-1-64); *Vars* v. *Boilermakers*, 204 F. Supp. 245, 248 (1962); *Grasso* v. *Phillips*, ... F. Supp. ..... (N. D. N. Y. 1962), 50 L. R. R. M. 2079; *Mamula* v. *Steelworkers*, 205 F. Supp. 915 (W. D. Pa. 1962); *Kelly* v. *Streho*, ... F. Supp. ..... (E. D. Mich. 1961), 47 L. R. R. M. 2609; *Hamilton* v. *Guinan*, 199 F. Supp. 562 (S. N. Y. 1961); *Burton* v. *Packinghouse Workers*, 199 F. Supp. 138 (D. Kan. 1961); *Jackson* v. *The Martin Company*, 180 F. Supp. 475 (D. Md. 1960); *Strauss* v. *Teamsters*, 179 F. Supp. 297 (E. D. Pa. 1959). There is not a single case holding to the contrary.

In an attempt to establish a conflict between the Seventh Circuit below and other circuits, Petitioners cite cases from the Second, Third and Ninth Circuits involving removal from office *not* for misconduct as an officer—but for the exercise of rights guaranteed members under Title I of the Act. *Salzhandler* v. *Caputo*, 316 F. 2d 445 (2d Cir. 1963); *Sheridan* v. *Brotherhood of Carpenters*, 306 F. 2d 152 (3d Cir. 1962) and *Grand Lodge* v. *King*, 56 L. R. R. M. 2639 (9th Cir. 1964). The issue in all three of these cases was the applicability of Section 609 of the Act under these circumstances. The Second and Ninth Circuits held that Section 609 was applicable; Judge Kalodner of the Third Circuit held it was not. It is opined in both *Sheridan* and *Grand Lodge* that "the mean Congress chose to accomplish its purpose was to wholly exclude suspension or removal from union office from the category of union action to which section 101 (a) (5) applied." No mention is made of Section 101 (a) (5) in *Salzhandler*. Therefore, the conflict be-

tween Circuits is over the issue of whether removal from office for the exercise of guaranteed Title I rights constitutes "discipline" under Section 609; all of the reported decisions conclude that removal from office for any reason whatsoever does not constitute "discipline" under Section 101 (a) (5).

Petitioners attempt to bring before this Court the merits of their argument by arguing the legislative history of Section 101 (a) (5). (Pet. 12-14.) We believe that this is improper on a petition for a writ of certiorari, and we will not engage in a protracted rebuttal. Suffice it to say that the legislative history was argued at length before the Court below (Brief for Defendants-Appellants 36-38; Brief for Plaintiffs-Appellees 42-51; Reply Brief for Defendants-Appellants 16-18), which relied upon the legislative history in support of its holding (Pet. 7a), as did most of the other fourteen federal courts that have considered this question. Not a single decision contains a construction of the legislative history along the lines suggested by Petitioners.

B. No Important Question of Federal Law Was Decided.

The Court below did not decide any question involving substantive rights of the Petitioner Quinn. The question entertained pertained only to the issue of whether the jurisdiction of the federal courts was enlarged by Section 101 (a) (5) to include the subject matter of the removal of a union officer from office. Clearly the state courts have jurisdiction over this subject matter. Therefore the question is merely whether Quinn has alternative forums in which to seek a remedy or whether he is limited to a single forum.

II.

NO IMPORTANT QUESTION OF FEDERAL LAW IS RAISED IN PETITIONERS' QUESTION 2.

Question 2 is so garbled that we have difficulty even paraphrasing it. As pointed out in our treatment of the question, *supra*, many misstatement and inaccuracies are contained in the question. However, even notwithstanding these defects, no important question of federal law can be gleaned from the question, and Petitioners' argument does not even suggest that any important federal question is involved. Indeed, we have some doubts as to whether this question has been treated at all in Petitioners' argument.

III.

REVIEW IS NOT WARRANTED OVER THE QUESTION OF WHETHER SECTION 101 (a)(1) OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT GRANTS TO UNION MEMBERS OTHER THAN A DEPOSED UNION OFFICER THE RIGHT TO SUE FOR HIS REINSTATEMENT.

A. The Statutory Section on Its Face Cannot Be So Construed.

Section 101 (a) (1), entitled "Equal Rights," affords union members equal rights "to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings . . . " It does not afford union members a right to reinstate officers deposed in accordance with the union constitution or to prevent the removal of union officers charged with misconduct. As is apparent from the title of the section, union members were afforded certain "equal rights"

with one another. The question raised by Petitioners poses no issue of equality of rights.

B. There Is No Conflict Over This Question in the Lower Federal Courts.

A conflict over this issue is lacking in the Courts of Appeals or even in the District Courts because the recorded cases fail to disclose that anyone has ever before suggested such a construction of the statutory section; indeed, it was not even argued seriously before the Court of Appeals in the instant case. We note that no legislative history or other authority has been cited by Petitioners either here or below in support of their position. In effect, the argument is that although the Joint Conference Committee went to the trouble of declaring that a deposed officer could not maintain a claim under Section 101 (a) (5), he could have any other member of the union maintain the claim for him under Section 101 (a) (1). The absurdity of the proposition is manifest from its statement.

IV.

REVIEW IS NOT WARRANTED OVER THE ISSUE RAISED AS TO THE APPLICABILITY OF THE DOCTRINE OF PENDENT JURISDICTION.

A. There Is No Conflict Over This Question in the Lower Federal Courts.

This Court in *Hurn* v. *Oursler*, 289 U. S. 238 (1933), established as requisite to a claim of pendent jurisdiction that the federal and non-federal claims presented must be but different grounds asserted in support of a single cause of action, defining a cause of action at page 246:

> "A cause of action does not consist of facts . . . but of the unlawful violation of a right which the facts

> show. The number and variety of the facts alleged do not establish more than one cause of action so long as their result, whether they be considered severally or in combination, is the violation of but one right by a single legal wrong. The facts are merely the means, and not the end. They do not constitute the cause of action, but they show its existence by making the wrong appear."

Petitioners do not overtly ask this Court to reconsider and reverse *Hurn* but contend that there is a conflict between the Court below which followed *Hurn* and decisions from the First, Second, Third, Fourth, Sixth and Ninth Circuits which they imply did not follow *Hurn*. They cite a number of decisions from those circuits, none of which establish any conflict, because they each follow the *Hurn* doctrine as set forth above. Although none of the cited decisions involve the Labor-Management Reporting and Disclosure Act, they each involve a claim or cause of action cognizable under both federal and state law with similar remedies available under both. (See analysis of these cases in Answer to Petition for Rehearing, 11-13.) Thus these decisions from other circuits come within the ambit of *Hurn* and the holding of the Court below that "in order to have pendent jurisdiction, there must be a single cause of action or wrong arising out of one set of operative facts, ostensibly redressible by federal law but also redressible by state law." (Pet. 7a)

As stated above, Petitioners cite no Labor-Management Reporting and Disclosure Act cases in support of their contention that there is a conflict. There are at least three reported decisions in which federal courts, when confronted with a claim properly under the Act and a claim held not properly brought under the Act, have dismissed the non federal claim, failing or refusing to apply the doctrine of pendent jurisdiction. *Vars* v. *Boilermakers*, 204 F. Supp. 245 (1962), Affmd. 320 F. 2d 576 (2d Cir. 1963); *Robbins* v. *Rarback*, 325 F. 2d 929 (2d Cir. 1963); *Mirra* v. *Highway*

Freight Drivers, ... F. Supp. ..... (D. C. N. J. 4-27-64), 56 L. R. R. M. 2127.

B. The Decision in the Instant Case Is Manifestly Consistent With the Hurn Doctrine.

In the instant case, the trusteeship and removal from office claims involve non-identity of parties as well as different issues, and different remedies are sought. There is a non-identity of plaintiffs. The plaintiffs in the Title III trusteeship action are Quinn, other individual members of the local union, and the local union itself. This joinder of plaintiffs is permissible under Section 304 (a), which provides: "Any member or subordinate body of a labor organization affected by any violation of this title . . . may bring a civil action in any district court of the United States . . ." However, in Quinn's action for removal from office, Quinn, as the disciplinee, is the only proper party plaintiff under Section 102 of Title I of the Act (assuming its applicability), which provides: "Any person whose rights secured by the provision of this Title have been infringed by any violation of this Title may bring a civil action in a district court of the United States . . ." Similarly, Quinn would be the only proper plaintiff in a state cause of action concerning his removal from office.

Likewise, there is a non-identity of defendants in the instant action. Pursuant to Section 304 of the Act, the trusteeship count can be brought solely against the international union that had imposed the trusteeship. However, the removal from office count names as defendants not only the international union, but numerous individual officers and members of the international union, who presumably played a part in the removal action.

Moreover, the issues raised by a trusteeship claim and a removal from office claim contain little similarity. Under

Title III of the Act, the instant trusteeship must be presumed valid and not subject to attack if established in conformity with the procedural requirements of the union's constitution and by-laws and authorized or ratified after a fair hearing before the International Executive Council, unless there is clear and convincing proof that the trusteeship was not established or maintained in good faith for a purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures or otherwise carrying out the legitimate objects of such labor organizations. (Pet. 10a-11a.) The issues raised in Quinn's removal from office claim are whether he was deprived of a fair hearing by reason of the bias and partiality of the International Executive Council as a body, the presence and participation of counsel for the International union at Quinn's hearing while Quinn's lawyers were excluded from the hearing, the introduction of evidence against Quinn which he was not given an opportunity to answer, and the lack of evidence to support the charges. (These are the issues constituting Quinn's claim, according to Petitioners. Pet. 6. It is unnecessary to discuss whether they are factually supported in the record.)

Clearly, the issues of illegal trusteeship and improper removal from office are not the same, and this was indicated in the decision of the Court below. Likewise, the remedies sought are entirely different, one being termination of a trusteeship (which has already been terminated) and the other being reinstatement of an individual to local union office. Petitioners' self-serving conclusion of law, which they prepared, that all of the evidence introduced with respect to one claim was equally applicable to the other claim is obviously sheer nonsense in view of the difference in issues and parties and rights of parties under each claim, and was reversed by the Court below.

Therefore, the manner of resolving the pendent jurisdiction issue raised in the instant case is so abundantly clear under the *Hurn* doctrine that review of the scope of pendent jurisdiction as related to this case is manifestly unwarranted. Moreover, to argue, as Petitioners do, that the Court should reconsider its long-standing *Hurn* doctrine in the light of the purported right of a deposed union officer to attach his grievance to a federal claim contesting the illegality of a trusteeship over a local union is to disregard the lack of any existing conflict in the federal courts over this question as well as the lack of any compelling reason militating in favor of such a reconsideration.

CONCLUSION.

Petitioners have shown this Court a morass of factual material intertwined with legal conclusions as set forth in voluminous findings and conclusions which they prepared for the District Court. They raise questions seeking the construction of two sections of Title I of the Labor-Management Reporting and Disclosure Act. The first question has been resolved unanimously by fifteen lower courts. The second question is so preposterous that no court has even considered it. The other questions are but an outgrowth of Petitioners' morass of facts and conclusions rather than a clear certification of any important federal question. Manifestly, under such circumstances, the review of the Supreme Court of the United States is not required.

Respectfully submitted,

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